

MOTION FILED
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No. 83-2102

IN THE
Supreme Court of the United States
OCTOBER TERM, 1984

STATE OF TEXAS, *et al.*,

Petitioners,

v.

UNITED STATES OF AMERICA, and
INTERSTATE COMMERCE COMMISSION, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

**MOTION OF THE ALABAMA PUBLIC SERVICE
COMMISSION AND THE NATIONAL ASSOCIATION
OF REGULATORY UTILITY COMMISSIONERS FOR
LEAVE TO FILE BRIEF AS AMICI CURIAE**

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The Alabama Public Service Commission (APSC) and the National Association of Regulatory Commissioners (NARUC) hereby respectfully move for leave to file the accompanying brief as *amici curiae* (printed under separate cover). The written consents of the Solicitor General and of the States of Kansas and Texas have been obtained and filed with the Clerk of the Court. The other respondents below (Association of American Railroads, Southern Pacific Transportation Company, and The Florida Railroads) have not consented.

The Alabama Public Service Commission (APSC) is an administrative agency established under the Constitution

and Laws of the State of Alabama. Among its duties, the APSC is statutorily required to regulate the intrastate rates and services of rail carriers operating within the State of Alabama. *Code of Alabama*, secs. 37-1-31 and 37-2-3 (1975). Under these statutory provisions, the APSC seeks to ensure that intrastate rail carriers operate in the public interest by providing common carrier transportation services at rates and charges which are just and reasonable.

The National Association of Regulatory Utility Commissioners (NARUC) is a quasi-governmental nonprofit organization founded in 1889. Within its membership are the governmental bodies of the fifty States, and the governmental agencies of the District of Columbia, Puerto Rico, and the Virgin Islands, engaged in the regulation of utilities and carriers. The APSC is a member of the NARUC. The mission of the NARUC is to serve the public interest by seeking to improve the quality and effectiveness of public regulation in America.

More specifically, the NARUC contains the State officials charged with the duty of regulating rail operations within their respective borders. As such, these officials have the obligation to assure the establishment of intrastate rail services and facilities as may be required by the public convenience and necessity, and the furnishing of dependable service at rates that are just and reasonable. The NARUC, in its capacity as the representative of the State regulatory commissions, participated before the Court of Appeals in this case as an Intervenor-Appellant.

The decision of the Court of Appeals for which petitioners seek review upheld, *inter alia*, the constitutionality of

section 214 of the Staggers Rail Act of 1980 (codified at 49 U.S.C. sec. 11501 (1983)). Because this statute radically transforms the systems by which the State commissions regulate intrastate rail rates and services, the APSC and the other member commissions of the NARUC have a strong interest in this case. The APSC and the NARUC therefore believe that the brief they are requesting permission to file will or may present the Court with an understanding of the great importance of this issue to the States.

Moreover, because the statutory scheme established in section 214 forces the States to either abandon rail regulation entirely or submit to plenary regulatory control by the Interstate Commerce Commission, the APSC and the NARUC believe that their brief will provide the Court with additional discussion on an important Tenth Amendment issue. Specifically, the APSC and the NARUC wish to bring to the Court's attention an issue not directly raised by petitioners in their petition for certiorari: that is, that section 214 constitutes a fundamental shift from the system of Federal oversight of State rail decisionmaking affirmed by this Court in *Houston, East & West Texas R. Co. v. United States*, 234 U.S. 342 (1914) to a system of direct and complete regulation of the States by an agency of the Federal government, which we submit contravenes the Tenth Amendment.

In sum, the statute has nationwide impact which should justify the participation of the national representative of

the State agencies affected thereby. Therefore, the APSC and the NARUC respectfully request that this brief be accepted for filing.

Respectfully submitted,

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